

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELL C. HOLMES,
Plaintiff,

v.

A. MARTINEZ, et al.,
Defendants.

No. 2:22-cv-01271-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When considering whether a complaint states a claim upon which relief can be granted, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

II. Allegations in the Complaint

At all times relevant to the allegations in the complaint, plaintiff was an inmate at California State Prison-Lancaster. Plaintiff first alleges that a correctional lieutenant illegally

1 punished him by taking away his exercise yard and dayroom access causing him to gain weight
2 and to develop blood clots. This same correctional lieutenant violated plaintiff's right to a
3 disciplinary hearing by not allowing plaintiff to make a statement in his defense. Plaintiff further
4 alleges that a medical doctor at the prison refused to give him a medical chrono for a two hour
5 walking pass to prevent the blood clots. Lastly, plaintiff contends that the warden and associate
6 warden at the prison failed to prevent this illegal punishment and wrongdoing by their staff.

7 By way of relief, plaintiff requests compensatory damages, a permanent single cell
8 chrono, and a prison transfer to a medical facility. ECF No. 1 at 6.

9 **III. Legal Standards**

10 The following legal standards are being provided to plaintiff based on his pro se status as
11 well as the nature of the allegations in the complaint.

12 **A. Linkage Requirement**

13 The civil rights statute requires that there be an actual connection or link between the
14 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
15 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
16 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
17 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
18 in another's affirmative acts or omits to perform an act which he is legally required to do that
19 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
20 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
21 link each named defendant with some affirmative act or omission that demonstrates a violation of
22 plaintiff's federal rights.

23 **B. Supervisory Liability**

24 Government officials may not be held liable for the unconstitutional conduct of their
25 subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009)
26 (“In a § 1983 suit ... the term “supervisory liability” is a misnomer. Absent vicarious liability,
27 each Government official, his or her title notwithstanding is only liable for his or her own
28 misconduct.”). When the named defendant holds a supervisory position, the causal link between

the defendant and the claimed constitutional violation must be specifically alleged; that is, a plaintiff must allege some facts indicating that the defendant either personally participated in or directed the alleged deprivation of constitutional rights or knew of the violations and failed to act to prevent them. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978).

C. Conditions of Confinement

In order for a prison official to be held liable for alleged unconstitutional conditions of confinement, the prisoner must allege facts that satisfy a two-prong test. Peralta v. Dillard, 744 F.3d 1076, 1082 (9th Cir. 2014) (citing Farmer, 511 U.S. at 837). The first prong is an objective prong, which requires that the deprivation be “sufficiently serious.” Lemire v. Cal. Dep’t of Corr. & Rehab., 726 F.3d 1062, 1074 (9th Cir. 2013) (citing Farmer, 511 U.S. at 834). In order to be sufficiently serious, the prison official’s “act or omission must result in the denial of the ‘minimal civilized measure of life’s necessities.’” Lemire, 726 F.3d at 1074. The objective prong is not satisfied in cases where prison officials provide prisoners with “adequate shelter, food, clothing, sanitation, medical care, and personal safety.” Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000) (quoting Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982)). “[R]outine discomfort inherent in the prison setting” does not rise to the level of a constitutional violation. Johnson v. Lewis, 217 F.3d at 732 (“[m]ore modest deprivations can also form the objective basis of a violation, but only if such deprivations are lengthy or ongoing”). Rather, extreme deprivations are required to make out a conditions of confinement claim, and only those deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to form the basis of an Eighth Amendment violation. Farmer, 511 U.S. at 834; Hudson v. McMillian, 503 U.S. 1, 9 (1992). The circumstances, nature, and duration of the deprivations are critical in determining whether the conditions complained of are grave enough to form the basis of a viable Eighth Amendment claim. Johnson v. Lewis, 217 F.3d at 731.

The second prong focuses on the subjective intent of the prison official. Peralta, 774 F.3d at 1082 (9th Cir. 2014) (citing Farmer, 511 U.S. at 837). The deliberate indifference standard requires a showing that the prison official acted or failed to act despite the prison official’s

1 knowledge of a substantial risk of serious harm to the prisoner. Id. (citing Farmer, 511 U.S. at
 2 842); see also Redman v. Cnty. of San Diego, 942 F.2d 1435, 1439 (9th Cir. 1991). Mere
 3 negligence on the part of the prison official is not sufficient to establish liability. Farmer, 511
 4 U.S. at 835.

5 **D. Deliberate Indifference to a Serious Medical Need**

6 Denial or delay of medical care for a prisoner's serious medical needs may constitute a
 7 violation of the prisoner's Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.
 8 97, 104-05 (1976). An individual is liable for such a violation only when the individual is
 9 deliberately indifferent to a prisoner's serious medical needs. Id.; see Jett v. Penner, 439 F.3d
 10 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.
 11 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

12 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439
 13 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other
 14 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the
 15 plaintiff must show a "serious medical need" by demonstrating that "failure to treat a prisoner's
 16 condition could result in further significant injury or the 'unnecessary and wanton infliction of
 17 pain.'" Id., citing Estelle, 429 U.S. at 104. "Examples of serious medical needs include '[t]he
 18 existence of an injury that a reasonable doctor or patient would find important and worthy of
 19 comment or treatment; the presence of a medical condition that significantly affects an
 20 individual's daily activities; or the existence of chronic and substantial pain.'" Lopez, 203 F. 3d
 21 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

22 Second, the plaintiff must show the defendant's response to the need was deliberately
 23 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act
 24 or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the
 25 indifference. Id. Under this standard, the prison official must not only "be aware of facts from
 26 which the inference could be drawn that a substantial risk of serious harm exists," but that person
 27 "must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). This "subjective
 28 approach" focuses only "on what a defendant's mental attitude actually was." Id. at 839. A

showing of merely negligent medical care is not enough to establish a constitutional violation. Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A difference of opinion about the proper course of treatment is not deliberate indifference, nor does a dispute between a prisoner and prison officials over the necessity for or extent of medical treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of medical treatment, “without more, is insufficient to state a claim of deliberate medical indifference.” Shapley v. Nev. Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the prisoner must show that the delay caused “significant harm and that Defendants should have known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

E. Due Process Protections

The due process clause of the Fourteenth Amendment provides certain procedural protections during disciplinary hearings for prisoners. These include: 1) written notice of the charges; 2) a statement of the evidence relied upon by the prison officials and the reasons for disciplinary action; 3) an opportunity to call witnesses and present documentary evidence when permitting him to do so would not unduly threaten institutional safety and goals, and 4) assistance from staff when the inmate is illiterate or the issues presented in the charge are complex. Wolff v. McDonnell, 418 U.S. 539, 563–66, 570 (1974). Due process is satisfied as long as there is some evidence to support the decisions of the disciplinary board. Cato v. Rushen, 824 F.2d 703, 704 (9th Cir.1987) (citing Superintendent, Massachusetts Correctional Institution v. Hill, 472 U.S. 445, 448 (1985)).

F. False Report

A prisoner has no constitutionally-guaranteed immunity from being falsely or wrongly accused of conduct that may lead to disciplinary sanctions. See Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989). As long as a prisoner is afforded procedural due process in the disciplinary hearing, allegations of a fabricated charge generally fail to state a claim under section 1983. See Hanrahan v. Lane, 747 F.2d 1137, 1140– 41 (7th Cir. 1984). An exception exists

1 when the fabrication of charges infringed on the inmate's substantive constitutional rights, such as
2 when false charges are made in retaliation for an inmate's exercise of a constitutionally protected
3 right. See Sprouse, 870 F.2d at 452 (holding that filing of a false disciplinary charge in retaliation
4 for a grievance filed by an inmate is actionable under section 1983).

5 **G. Prison Grievance Procedure**

6 Prisoners do not have “a separate constitutional entitlement to a specific prison grievance
7 procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855
8 F.2d 639, 640 (9th Cir. 1988)). Accordingly, the prison grievance procedure does not confer any
9 substantive constitutional rights upon inmates and actions in reviewing and denying inmate
10 appeals generally do not serve as a basis for liability under section 1983. Id.

11 **IV. Analysis**

12 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
13 which relief can be granted under federal law. Plaintiff does not allege a cognizable claim against
14 defendant Martinez who allegedly issued the disciplinary violation against plaintiff because there
15 is no allegation that it was written in retaliation for plaintiff’s prior grievances or other protected
16 conduct. To the extent that plaintiff alleges that the sanction imposed for the disciplinary
17 violation resulted in a serious medical condition, the complaint does not establish a subjective
18 awareness by defendant Martinez or Ha that the loss of exercise and dayroom privileges could
19 lead plaintiff to develop blood clots. Therefore, the complaint does not sufficiently plead a
20 deliberate indifference claim against any defendant. The claims against defendants Williams and
21 Johnson fail to state a claim based merely on their supervisory capacity. Ashcroft v. Iqbal, 556
22 U.S. 662, 677 (2009). For all these reasons, plaintiff’s complaint must be dismissed. The court
23 will, however, grant leave to file an amended complaint.

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
25 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
26 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
27 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
28 § 1983 unless there is some affirmative link or connection between a defendant’s actions and the

1 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
2 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
3 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

4 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
5 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
6 complaint be complete in itself without reference to any prior pleading. This is because, as a
7 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
8 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
9 longer serves any function in the case. Therefore, in an amended complaint, as in an original
10 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

11 **V. Plain Language Summary for Pro Se Party**

12 The following information is meant to explain this order in plain English and is not
13 intended as legal advice.

14 The court has reviewed the allegations in your complaint and determined that they do not
15 state any claim against the defendants. Your complaint is being dismissed, but you are being
16 given the chance to fix the problems identified in this screening order.

17 Although you are not required to do so, you may file an amended complaint within 30
18 days from the date of this order. If you choose to file an amended complaint, pay particular
19 attention to the legal standards identified in this order which may apply to your claims.

20 In accordance with the above, IT IS HEREBY ORDERED that:

21 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.

22 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
23 shall be collected and paid in accordance with this court's order to the Director of the California
24 Department of Corrections and Rehabilitation filed concurrently herewith.

25 3. Plaintiff's complaint is dismissed.

26 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
27 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
28 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket

number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: January 3, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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